

## **REMARKS/ARGUMENTS**

These remarks are made in response to the Office Action of November 7, 2008 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Examiner is expressly authorized to charge any deficiencies to Deposit Account No. 50-0951.

### **Claim Rejections – 35 USC §§ 102 & 103**

Claims 1, 4, and 5 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 6,453,281 to Walters (hereinafter Walters). Claims 2 and 3 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Walters in view of U.S. Patent 5,943,402 to Hamel (hereinafter Hamel).

Applicants respectfully disagree with the rejections and thus have not amended claims.

### **Aspects of Applicants' Invention**

It may be helpful to reiterate certain aspects of Applicants' invention prior to addressing the cited references. One embodiment of the invention, as typified by Claim 1, is a method of marking various types of audio content within an audio file.

The method can include, for each type of audio content, defining a set of audio tags comprising an opening tag and a closing tag; associating the set of audio tags with a corresponding type of audio content; marking a starting location of the corresponding type of audio content within the audio file using the opening tag; and marking an ending location of the corresponding type of audio content within the audio file using the closing tag. See, e.g., Specification, paragraph [0020]; see also Fig. 2.

*The Claims Define Over The Prior Art*

Fig. 28 of Walters shows an audio program marking and composing system 600 that includes a computer 602 and a portable audio database device 618. Through cooperative operation between the computer 602 and the portable audio database device 618, a user may review one or more audio programs contained in an audio database 604, mark selected portions of one or more of the audio programs contained therein, download the marked audio program portions from the audio database 604 to the memory 624 or memory module 614 of the portable audio database device 618, and manipulate the downloaded audio segments to compose a desired audio program. The audio database 604 includes one or more audio programs which can be reviewed and selected by use of the portable audio database device 618 which communicates with the audio database 604 through use of an interface 618. The portion of the audio database illustrated in Fig. 28 is representative of a "hypertext" type of audio program, referred to herein as hyperaudio or hyperlink audio, which includes a primary audio program PGM-1606 from which other audio programs can be accessed, such as the programs PGM-2608, PGM-3610, and PGM-4612. The illustrated audio program may be viewed as a hyperaudio type of audio program, since various deviations from a primary program may be effected at various branch points in the primary and related audio programs by a user. By way of example, a user may utilize the navigation capability of a portable audio database device 618 to review a primary program PGM-1606, and, at a desired or predetermined location, branch to a secondary program PGM-2608 or PGM-4612. While reviewing the secondary audio program PGM-2608, for example, the user may again branch to a tertiary audio program PGM-3610. The programs illustrated in Fig. 28 may be linked or associated with one another or may be independent programs which may be accessed or reviewed individually by the user as desired. See col. 26, line 44 to col. 27, line 14.

As can be seen from the above paragraph, the audio program marking and composing system 600 of Walters can mark selected portions of one or more of the audio programs, download the marked audio program portions, and manipulate the downloaded audio segments to compose a desired audio program. However, in Walters the markings do not mark the beginnings or endings of particular types of audio content, but rather selected portions of one or more of the audio programs which may be of the same type. Even if the one or more of the audio programs are of different types, the markings do not mark the beginning or ending of a particular type of audio content, but rather a selected portion thereof. Further, it is noted that in Walters the markings are not used to demarcate different types of audio content within a single audio file as in the present invention.

It is disclosed in col. 27, lines 15-20 of Walters that the program PGM-1606 is a recording of a lecture given by professor on a particular topic and programs PGM-2608, PGM-3610, and PGM-4612 represent lectures given by other professors on subjects discussed during, or related to, the lecture represented by program PGM-1606.

However, it is noted that the programs PGM-1606, PGM-2608, PGM-3610, and PGM-4612 represent lectures given by different professors, but are not different types of audio content. Also, it is noted that the programs PGM-1606, PGM-2608, PGM-3610, and PGM-4612 are separate audio files, not different types of audio content within a single audio file as in the present invention.

Further, as already discussed in the previous response, the markings S1, S2, S3, E1, E2, and E3 indicate the start point and end point of the corresponding selected and downloaded portions of the audio programs. However, these markings do not indicate the start points or end points of different types of audio content. For example, the subprograms SP1, SP2, and SP3 are all of the same type, namely are all portions of lectures.

Accordingly, Walters fails to disclose or suggest each and every element of Claim

1. Applicants therefore respectfully submit that Claim 1 defines over the prior art. Furthermore, as each of the remaining claims depends from Claim 1 while reciting additional features, Applicants further respectfully submit that the remaining claims likewise define over the prior art.

Applicants thus respectfully request that the claim rejections under 35 U.S.C. §§ 102 & 103 be withdrawn.

### CONCLUSION

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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